

ABYK

CONFIDENTIAL  
AFFINITY GROUP BANKCARD AGREEMENT

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THIS AGREEMENT, made this 14 day of May, 1999, by and between THE VMI ALUMNI ASSOCIATION, INC., a Virginia not-for-profit association having its principal office at Moody Hall, Letcher Avenue, Lexington, VA 24450 ("Group") and FIRST USA BANK, N.A., a national banking association, having its principal offices at Three Christina Centre, 201 North Walnut Street, Wilmington, Delaware, 19801 ("FUSA").

RECITALS:

WHEREAS, FUSA desires to make its MasterCard and/or Visa consumer credit products and related services (hereinafter referred to as "Credit Card(s)") available to the alumni, officers, directors, trustees, employees, faculty members, athletic boosters, donors, parents of students, friends, and students of The Virginia Military Institute (the "Group Members"); and

WHEREAS, Group is willing to make its proprietary intellectual property and mailing lists available to FUSA in connection with FUSA's offering of FUSA's Credit Card(s) to and among the Group Members subject to the terms and conditions hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

I. License to Use Marks.

(a) During the term of this Agreement, FUSA shall have the right and license to use the respective name, trademarks, servicemarks, copyrights and logo of The Virginia Military Institute (the "Institute") and of Group as they now exist or as they may be modified during the term hereof (collectively, the "Marks") solely in connection with FUSA's marketing of Credit Card(s) to Group Members under this Agreement (the "Affinity Program" or "Program"). Examples of the current Marks are set forth in Exhibit B attached hereto. Such right and license is restricted to the products and services described herein and shall not apply or extend to any other product or service offered by FUSA. Group hereby agrees that the Marks may be used on either MasterCard or Visa Credit Cards as well as merchandise used to encourage individuals to apply for or use Credit Cards ("Premiums"), and Group and FUSA agree that FUSA will only issue Credit Cards bearing the Marks pursuant to this Agreement, unless otherwise mutually agreed in writing by FUSA and Group. Except for amounts paid to Group pursuant to Paragraph 6 and Exhibit A hereof, FUSA shall not be required to pay any additional amounts to Group, or on account of Group, in connection with the use of the Marks in conjunction with this Program. Following termination of this Agreement, Credit Card(s) issued during the term hereof may continue to bear the Marks until the normal expiration date thereof. Subject to and consistent with the rules and regulations of Visa and MasterCard, FUSA shall comply with the standards established by Group with respect to the form of the Marks and their usage.

(b) Subject to the foregoing, each of the parties hereto is and shall remain the owner of all rights in and to its name and logo, as the same now exist or as they may hereafter be modified, including all rights in and to any copyright, trademark, servicemark

and/or like rights pertaining thereto. Any and all rights to the Marks not herein specifically granted and licensed to FUSA are reserved to Group. Except as otherwise specifically provided for in Paragraph 1(a) hereof, upon the termination of this Agreement, all rights conveyed by Group to FUSA with respect to the use of the Marks shall cease, and all such rights shall revert to Group. Upon termination of this Agreement, FUSA shall have no further right to market its cardmember products using the Marks or to further utilize any promotional materials containing the Marks. However, nothing contained herein shall require FUSA to cancel any Account or to terminate any card issued in connection with this Agreement.

2. Mailing Lists.

(a) Group shall provide FUSA with lists of the Group Members eighteen (18) years of age and older, including names, and residential addresses and, where available, residential telephone numbers and e-mail addresses, via magnetic tape, cartridge, or any other media which is mutually agreed upon (the "Lists"). Group shall use its best efforts to provide as complete a list as possible of all Group Members, which first list delivery shall consist of a minimum of 18,000 unique mailable Group Member names, consisting of alumni, athletic boosters, donors, parents and friends. Thereafter, Group shall provide FUSA with updated Lists at least two (2) times per year. Further, this Program shall include marketing Credit Cards to current students of the University. If student marketing includes the use of direct mail, then Group shall provide an additional list of approximately 1,300 mailable student names. All Lists shall be provided to FUSA by Group at no additional cost to FUSA.

(b) FUSA shall use the Lists provided by Group on a basis consistent with the intent and terms of this Agreement, (i.e. to market and service Credit Cards), and shall not rent, use or permit any third party handling such Lists to use them for any other purpose. FUSA shall not rent or otherwise make available such Lists to any third party (except for the purposes of fulfilling obligations under this Agreement) without the express written consent of Group. The Lists provided by Group are and shall remain the sole property of Group provided they have been provided to FUSA by Group at no expense to FUSA, except to the extent that such Group names are available to FUSA from another source. FUSA will, subject to applicable law requiring their retention, return such Lists to Group or destroy them upon the termination of this Agreement. However, FUSA may maintain separately all information which it obtains as a result of an Account relationship or an application for an Account relationship with any Group Member. This information becomes a part of FUSA's own files which shall not be subject to this Agreement and will not imply or suggest any endorsement by Group.

3. Offering of Credit Cards by FUSA. FUSA shall offer Credit Card(s) to Group Members in accordance with the following provisions:

(a) Subject to subparagraph (c) of this Paragraph 3, FUSA shall, at its own expense, design and develop such marketing, promotion and solicitation materials as it deems appropriate to promote the Affinity Program among Group Members, and Group shall not unreasonably impede FUSA's administration of such promotional and solicitation activities. FUSA and Group will jointly schedule and direct the solicitation of Group Members, provided, that FUSA reserves the right to limit its solicitation materials to those persons deemed by it to be creditworthy in accordance with FUSA's normal credit criteria and credit practices.

(b) Subject to federal, state and local law and any other applicable rules and regulations (e.g. MasterCard or Visa operating regulations), all approved Accounts

shall receive Credit Card(s) issued by FUSA. Group shall have the right to approve the front design of the Credit Card(s), such approval not to be unreasonably withheld. In the event Group does not respond to FUSA's request for approval within ten (10) days following Group's receipt of such request, Group's approval shall be deemed granted. In the event of any change in its Marks, Group shall bear and promptly reimburse FUSA for any additional expenses incurred by FUSA in connection with the use of the altered Marks mutually agreed upon by FUSA and by Group. FUSA shall have the right to designate on the reverse side of the Credit Card(s) such information as FUSA shall, in its sole discretion, deem appropriate.

(c) FUSA shall submit to Group, for its prior approval, samples of all marketing, promotional or solicitation materials, printed or otherwise, which FUSA intends to utilize to market the Affinity Program to and among Group Members as well as any Premiums bearing the Marks. Group shall review such materials and respond to FUSA's requests for approval on a timely basis. In addition, approval by Group of any marketing materials or merchandise submitted by FUSA for review shall not be unreasonably withheld. FUSA further reserves the right to communicate information to the Cardmember, which it normally sends its other cardmembers and does not utilize Group's name or logo, without having to obtain the prior approval of Group.

4. Direct Solicitations by Group. Upon request by Group and with prior written approval by FUSA, FUSA shall permit Group, subject to reasonable restrictions set forth by FUSA, to directly and indirectly solicit applications for Credit Cards from Group Members without the direct participation of FUSA ("Group Direct Promotions"). Any marketing materials developed by Group must be approved in writing by FUSA prior to distribution by Group, however, any Credit Card applications used for this Program must be supplied to Group by FUSA. Unless otherwise agreed to by FUSA and Group, all expenses associated with Group Direct Promotions shall be borne solely by Group. For each Account opened by Group as a result of a Group Direct Promotion, FUSA shall pay to Group the Marketing Royalty described in item 2 of Exhibit A hereof in lieu of the Account Royalty described in item 1 of Exhibit A. In the event that FUSA prepares and pays for materials (including Credit Card applications) used in conjunction with a Group Direct Promotion, FUSA shall thereafter offset such expenditures against the total Royalties earned by Group pursuant to this Agreement.

5. Issuance of Credit Cards.

(a) FUSA shall issue Credit Cards to interested Group Members in accordance with FUSA's standard consumer credit card issuing policies and credit practices. All decisions concerning the creditworthiness of any potential Group Member shall be made at the sole discretion of FUSA.

(b) Credit Card(s) issued by FUSA to approved Group Members ("Cardmember(s)") pursuant to the Affinity Program shall be governed by the terms of cardmember agreements to be entered into between such persons and FUSA. Such cardmember agreement shall specify that the laws of the State of Delaware, and as applicable, federal law, shall govern the terms and conditions of such Account and the extension of credit by FUSA to the Cardmember. Notwithstanding any other limitations contained in this Agreement, FUSA shall have the right to amend such cardmember agreements at any time in accordance with applicable law such as changing the basic pricing on individual Accounts at anytime in the event of late payments, non-payments, delinquency, payment by checks which fail to clear, default, bankruptcy, or other consistent or substantial failure to perform by any Group Member cardholder pursuant to the terms of the cardholder agreement.

(c) Group shall not possess any ownership interest in Credit Cards issued and Accounts established pursuant to this Agreement (the "Accounts"). In addition, any and all outstanding balances with respect thereto (including, without limitation, all amounts owing for the payments of goods and services, periodic finance charges, late and other charges) and all records developed and retained by FUSA in connection therewith shall be the sole property of FUSA or its assigns and Group shall have no rights or interests therein.

6. Royalties.

(a) During the term of this Agreement (including any renewal terms as provided in Paragraph 13 hereof) and in consideration of the use of Group's Marks and Group's Lists, the exclusivity, and the Promotional Vehicles (See Exhibit C) set forth in this Agreement, FUSA shall pay to Group certain Account, Renewal and Sales Royalties (collectively, the "Royalties") as set forth on Exhibit A attached hereto.

(b) Notwithstanding any of the above, FUSA shall not be obligated to pay to Group any duplicate Royalties described in subparagraph 6(a) and detailed in Exhibit A in the event that the Accounts on which such Royalties are calculated represent substitute Accounts, including, but not limited to, Accounts which are established due to the loss or theft of a Cardmember's existing Credit Card or Accounts which were established as a result of former joint Cardmembers requesting individual Accounts. In the event that Royalties are paid on any Accounts which do not remain open with charging privileges for at least 6 months following the calendar month in which they were opened by FUSA ("Closed Accounts"), FUSA shall deduct the Royalties paid on such Closed Accounts from subsequent payments to Group.

(c) FUSA shall provide Group with a reconciliation report within 60 days following the end of each calendar quarter setting forth the amount of Royalties earned by Group during such calendar quarter. Any amounts owing to Group and payable pursuant to the terms of this Paragraph 6 shall be paid to Group within 60 days following the end of such calendar quarter.

(d) FUSA's obligation to pay any of the aforementioned Royalties to Group shall cease immediately upon the termination of this Agreement for any reason whatsoever, provided that such Royalties shall be reconciled and paid to the date of termination.

7. Cardmember Statements.

(a) Subject to reasonable space, weight, size, content, and scheduling restrictions, and upon FUSA's prior review and approval, Group may from time to time include informational inserts or statement messages in billing statements mailed by FUSA to Cardmembers.

(b) FUSA will pay for the normal cost of mailing statement insertions as described in subparagraph 7(a) above, excluding the cost of preparing and producing the actual insert which shall be the sole responsibility of Group. In addition, if the inserts added by Group increase the postal expense incurred by FUSA to mail statements with such inserts, then FUSA shall inform Group in advance and, provided Group agrees to reimburse FUSA for such incremental postage expense, FUSA will use reasonable efforts to include such insertion.

8. Records. During the term of this Agreement, FUSA agrees that it will maintain accurate records with respect to (a) Net Retail Sales and (b) all Accounts established by FUSA under this Agreement. Such records shall be open for inspection by representatives of Group at such reasonable times as shall be agreed upon by FUSA, provided that any inspection shall be subject to such security procedures as FUSA may reasonably impose and subject to such limitations as may be required under applicable rules, regulations or statutes governing the conduct of FUSA's business.

9. Relationship. Nothing in this Agreement is intended to or shall be construed to constitute or establish an agency, joint venture, partnership or fiduciary relationship between the parties, and neither party shall have the right or authority to act for or on behalf of the other party.

10. Confidentiality.

(a) The parties acknowledge and agree that the terms of this Agreement and all information provided to or in connection with either party's performance under this Agreement shall be considered confidential and proprietary information ("Confidential Information") and shall not be disclosed to any third party without the prior written consent of the party providing the Confidential Information ("Disclosing Party"). Confidential Information shall include, without limitation: (i) names, addresses, and demographic, behavioral, and credit information relating to FUSA Cardmembers, potential FUSA Cardmembers or the Lists provided to FUSA pursuant to Paragraph 2; (ii) marketing materials, strategies and targeting methods; (iii) business objectives, assets and properties; and (iv) programming techniques and technical, developmental, cost and processing information.

(b) The party receiving such Confidential Information ("Receiving Party") shall use Confidential Information only for the purpose of performing the terms of this Agreement and shall not accumulate in any way or make use of Confidential Information for any other purpose. The Receiving Party shall ensure that only its employees, authorized agents, or subcontractors who need to know Confidential Information to perform this Agreement will receive Confidential Information and that such persons agree to be bound by the provisions of this Paragraph and maintain the existence of this Agreement and the nature of their obligations hereunder strictly confidential.

(c) The obligations with respect to Confidential Information shall not apply to Confidential Information that: (i) either party or its personnel already know at the time it is disclosed as shown by their written records; (ii) is publicly known without breach of this Agreement; (iii) either party received from a third party authorized to disclose it without restriction; (iv) either party, its agents or subcontractors, developed independently without use of Confidential Information; or (v) either party is required by law, regulation or valid court or governmental agency order to disclose, in which case the party receiving such an order must give notice to the other party, allowing them to seek a protective order.

(d) Each party agrees that any unauthorized use or disclosure of Confidential Information may cause immediate and irreparable harm to the Disclosing Party for which money damages may not constitute an adequate remedy. In that event, each party agrees that injunctive relief may be warranted in addition to any other remedies the Disclosing Party may have. In addition, the Receiving Party agrees promptly to advise the Disclosing Party in writing of any unauthorized misappropriation, disclosure or use by any person of the Confidential Information which may come to its attention and to take all steps

at its own expense reasonably requested by the Disclosing Party to limit, stop or otherwise remedy such misappropriation, disclosure or use.

(e) Upon either party's demand, or upon the termination of this Agreement, the parties shall comply with each other's reasonable instructions regarding the disposition of Confidential Information which may include return of any and all Confidential Information (including any copies or reproductions thereof). Such compliance shall be certified in writing, including a statement that no copies of confidential information have been kept.

(f) Except as necessary for its performance under this Agreement, Group shall not use the name of FUSA, its affiliates or subsidiaries in connection with any representation, solicitation, promotion, sales or marketing publication or advertisement, or make any public statement relating to FUSA, its affiliates or subsidiaries, without the prior full disclosure of same to FUSA, and the prior written consent of FUSA.

(g) The obligations of this Paragraph 10 shall survive the termination of this Agreement for a period of two (2) years.

(h) Except as may be required by law, regulation or any Governmental Authority, neither Group, nor any of its affiliates, shall issue a press release or make public announcement or any disclosure to any third party related to the transactions contemplated by this Agreement without the prior consent of FUSA, which consent shall not be unreasonably withheld or delayed.

#### 11. Representations and Warranties.

(a) FUSA represents and warrants that (i) it is a national banking association duly organized, validly existing and in good standing under the laws of the United States and (ii) the execution and delivery by FUSA of this Agreement, and the performance by FUSA of the transactions contemplated hereby, are within FUSA's corporate powers, have been duly authorized by all necessary corporate action, do not require any consent or other action by or in respect of, or filing with, any third party or governmental body or agency (other than informational filings required by MasterCard or Visa), and do not contravene, violate or conflict with, or constitute a default under, any provision of applicable law or regulation or of the charter or by-laws of FUSA or of any agreement, judgment, injunction, order, decree or other instrument binding upon FUSA.

(b) Group represents and warrants that it is a not-for-profit association duly organized, validly existing and in good standing under the laws of the State of Virginia. Group further represents and warrants that (i) the execution and delivery by Group of this Agreement, and the performance by Group of the transactions contemplated hereby, are within Group's powers, have been duly authorized by all necessary action, do not require any consent or other action by or in respect of, filing with, any third party or any governmental body or agency, and do not contravene, violate or conflict with, or constitute a default under, any provision of applicable law, regulation, or under any governing documents, charter or bylaw, or any agreement, judgment, injunction, order, decree or other instrument binding on Group and do not require the payment of any other fees or royalties, except as set forth herein, on the part of FUSA; and (ii) it is the owner of its Marks, and, with respect to the Institute's Marks, is the exclusive licensee for a credit card program at the Institute, has the right to and is authorized to grant to FUSA the right and license to use the respective name, trademarks, servicemarks, copyrights and logos as set forth in paragraph 1 above and it is not currently aware of any claims, and is not

currently involved in any litigation, challenging Group's ownership of the Marks. Group represents and warrants that it has the right, power and authority to execute this Agreement and act in accordance herewith.

12. Release and Indemnification.

(a) FUSA shall not be responsible in any way for any misrepresentation, negligent act or omission or willful misconduct of Group, its affiliates, officers, directors, agents, or employees in connection with the entry into or performance of any obligation of Group under this Agreement. Further, Group shall indemnify, defend and hold FUSA harmless from and against all claims, actions, suits or other proceedings, and any and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to (i) any actual or alleged violation or inaccuracy of any representation or warranty of Group contained in Paragraph 11 above, (ii) any actual or alleged infringement of any trademark, copyright, trade name or other proprietary ownership interest resulting from the use by FUSA of the Marks of Group as contemplated by this Agreement, and (iii) any negligent act or omission or willful misconduct of Group or its directors, officers, employees, agents or assigns in connection with the entry into or performance of this Agreement.

(b) Group shall not be responsible in any way for any misrepresentation, negligent act or omission or willful misconduct of FUSA, its affiliates, officers, directors, agents, or employees in connection with the entry into or performance of any obligation of FUSA under this Agreement. Further, FUSA shall indemnify, defend and hold Group harmless from and against all claims, actions, suits or other proceedings, and any and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to (i) any actual or alleged violation or inaccuracy of any representation or warranty of FUSA contained in Paragraph 11 above, (ii) any act or omission of FUSA in connection with the issuance of Credit Card(s) and/or the administration of Credit Card Accounts which constitutes a violation of State of Delaware or federal banking or consumer credit laws or regulations, and (iii) any negligent act or omission or willful misconduct of FUSA or its directors, officers, employees, agents or assigns in connection with the entry into or performance of this Agreement.

13. Term/Termination.

(a) Subject to the provisions of subparagraphs 13(b), (c), (d) and (e) below, this Agreement shall be effective as of the date hereof and shall continue for an initial term of seven (7) years (the "Initial Term") from the date of FUSA's first marketing effort for this Program (the "Commencement Date"). Following the Initial Term, this Agreement shall be automatically renewed for successive renewal terms of two (2) years each unless, at least 90 days prior to the termination of the Initial Term or the then current renewal term, either party shall have notified the other in writing of its decision not to renew this Agreement. If the terms hereof are to be amended in connection with any renewal, an appropriate addendum shall be added hereto reflecting, as applicable, the revised terms hereof.

(b) If there is a material default by either party in the performance of the terms and conditions of this Agreement, and such default shall continue for a period of 30 days after receipt by the defaulting party of written notice thereof from the nondefaulting party (setting forth in detail the nature of such default), then this Agreement shall terminate at the option of the nondefaulting party as of the 31st day following the receipt of such written notice. If, however, the default cannot be remedied within such thirty (30) day

period, such time period shall be extended for an additional period of not more than thirty (30) days, so long as the defaulting party has notified the non-defaulting party in writing and in detail of its plans to initiate substantive steps to remedy the default and diligently thereafter pursues the same to completion within such additional thirty (30) day period.

(c) This Agreement shall be deemed immediately terminated, without the requirement of further action or notice by either party, in the event that either party, or a direct or indirect holding company of either party, shall become subject to voluntary or involuntary bankruptcy, insolvency, receivership, conservatorship or like proceedings (including, but not limited to, the takeover of such party by the applicable regulatory agency) pursuant to applicable state or federal law or ceases to conduct its normal and customary business operations.

(d) In the event that any material change in any federal, state or local law, statute, operating rule or regulation, or any material change in any operating rule or regulation of either MasterCard or Visa makes the continued performance of this Agreement under the then current terms and conditions unduly burdensome, then FUSA shall have the right to terminate this Agreement upon 90 days advance written notice. Such written notice shall include a detailed explanation and evidence of the burden imposed as a result of such change.

(e) In the event that any representation set forth in Paragraph 11 of this Agreement shall prove to be untrue, either party shall have the right to immediately terminate this Agreement and all of its obligations contained herein by notice to the party making the misrepresentation.

(f) Upon termination of this Agreement:

(i) Group shall promptly return to FUSA all take-one and other marketing materials that have been supplied to Group by FUSA;

(ii) All Accounts which have been opened pursuant to the terms hereof, together with all Accounts for which applications have been received but not yet processed by FUSA as of the effective date of such termination, shall remain the sole and exclusive property of FUSA;

(iii) FUSA shall have the right, but not the obligation, to reissue Credit Card(s) previously issued to Cardmembers pursuant to this Agreement and to issue card(s) to applicants whose applications are received after the effective date of such termination, in its own name and without any reference to Group on such card(s).

(iv) Except as otherwise specifically stated herein, all obligations to Group shall cease after the effective date of such termination.

14. Exclusivity. During the term of this Agreement, FUSA shall have the exclusive right to perform the credit and/or charge card services contemplated by this Agreement, and Group agrees that during the term hereof it shall not by itself or in conjunction with others, directly or indirectly, or through any parent, affiliate or subsidiary, offer or endorse, or enter into any agreement with others for the provision of charge card, credit card or credit card related products or services to Group Members.

15. Non-Competition. With respect to all Accounts established pursuant to this Agreement, Group agrees that neither Group nor any entity which Group controls shall by itself or in conjunction with others, directly or indirectly, during the term of this Agreement

(including any Renewal Term) and for a period of one (1) year following the termination of this Agreement for any reason whatsoever, specifically target any offer of a credit card or credit card related product to Cardmembers.

16. Notices. Any and all notices or other communications required or permitted under this Agreement shall be in writing and shall be delivered either by personal delivery; by telex, telegram, mailgram or telecopy; by nationally recognized overnight courier service; or by certified or registered mail, return receipt requested, addressed as follows:

If to FUSA, to:

FIRST USA BANK, N.A.  
Three Christina Centre  
201 North Walnut Street  
Wilmington, DE 19801  
Attention: Joseph Purzycki  
Senior Vice President

with a copy to:

General Counsel  
Fax No. (302) 884-8361

If to Group, to:

THE VMI ALUMNI ASSOCIATION, INC.  
P.O. Box 932  
Moody Hall  
Letcher Avenue  
Lexington, VA 24450

with copies to:

or to such other person or address as either party shall have previously designated to the other by written notice given in the manner set forth above. Notices shall be deemed given one day after sent, if sent by telex, telegram, mailgram, telecopy or by overnight courier; when delivered and receipted for, if hand delivered; or when receipted for (or upon the date of attempted delivery where delivery is refused) if sent by certified or registered mail, return receipt requested. Where notice requires a response in ten (10) or fewer business days, the notice should be sent by hand delivery or telecopy.

17. Assignment. Any assignment by either party of that party's rights and/or obligations pursuant to the Agreement shall be subject to the prior written consent of the other party to this Agreement. In addition, and notwithstanding the foregoing, (i) FUSA may, without prior written consent, assign this Agreement and any of FUSA's rights and obligations, to any other federally regulated financial institution upon the condition that the assignee shall assume, either expressly or by operation of law, all of FUSA's obligations hereunder, upon the delivery of prior written notice thereof to Group; (ii) FUSA may, without prior notice or consent, assign its obligations regarding marketing and card acquisition to First Credit Card Services, USA LLC and (iii) Group, without prior written

notice or consent, may assign its rights to receive Fees and Royalties pursuant to this Agreement to a commercial lending institution which provides a credit facility to Group as collateral security for such credit facility.

18. Entire Agreement/Amendment. This Agreement, including exhibits, constitutes the entire understanding between the parties with respect to the subject matter, and supersedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. No amendment or modification of this agreement shall be effective unless it is in writing and executed by all of the parties hereto.

19. Non-Waiver of Default. The failure of either party to insist, in any one or more instances, on the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing party with respect thereto shall continue in full force and effect.

20. Severability. In the event that any provision of this Agreement shall, for any reason, be deemed to be invalid and unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

21. 1. Alternative Dispute Resolution. Group and FUSA hereby waive their rights to resolve disputes through any court proceeding or litigation and acknowledge that all disputes shall be resolved pursuant to this Section, except that equitable relief may be sought pursuant to Paragraph 10 from any court of competent jurisdiction. Both parties represent to the other that this waiver is made knowingly and voluntarily after consultation with and upon the advice of counsel and is a material part of this Agreement.

2. Informal Dispute Resolution. Any controversy or claim between Group, on the one hand, and FUSA on the other hand, arising from or in connection with this Agreement or the relationship of the parties under this Agreement whether based on contract, tort, common law, equity, statute, regulation, order or otherwise ("Dispute") shall be resolved as follows:

(a) Upon written request of either Group, on the one hand, and FUSA on the other hand, a duly appointed representative(s) of each party will meet for the purpose of attempting to resolve such Dispute. Should they be unable to resolve the Dispute, the \_\_\_\_\_ of Group will meet with FUSA's Executive Vice President of Marketing (the "Executives") in an effort to resolve the Dispute. Said meeting shall be in person or by telephone.

(b) The Executives shall meet as often as the parties agree to discuss the problem in an effort to resolve the Dispute without the necessity of any formal proceeding.

(c) Formal proceedings for the resolution of a Dispute may not be commenced until the earlier of:

- i. the parties concluding in good faith that amicable resolution through the procedures set forth in subsections (a)-(b) hereof does not appear likely; or
- ii. the expiration of the thirty-five (35) day period immediately following the initial request to negotiate the Dispute;

provided, however, that this Section will not be construed to prevent a party from instituting formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors or to seek temporary or preliminary injunctive relief. The commencement of a proceeding pursuant to this provision does not relieve a party from the executive consultation requirement contained in this Section.

### 3. Arbitration.

(a) If the parties are unable to resolve any Dispute as contemplated above, such Dispute shall be submitted to mandatory and binding arbitration at the election of either Group, on the one hand, and FUSA on the other hand (the "Disputing Party"). Except as otherwise provided in this Section, the arbitration shall be pursuant to the Code of Procedure of the National Arbitration Forum ("NAF"), P.O. Box 50191, Minneapolis, MN 55405, (800) 474-2371.

(b) To initiate arbitration, the Disputing Party shall notify the other party in writing (the "Arbitration Demand") with a copy to the NAF, which shall (i) describe in reasonable detail the nature of the Dispute, (ii) state the amount of the claim, and, (iii) specify the requested relief. Within fifteen (15) days after the other party's receipt of the Arbitration Demand, such other party shall file, and serve on the Disputing Party, a written statement (i) answering the claims set forth in the Arbitration Demand and including any affirmative defenses of such party; (ii) asserting any counterclaim, which shall (A) describe in reasonable detail the nature of the Dispute relating to the counterclaim, (B) state the amount of the counterclaim, and (C) specify the requested relief.

(c) If the amount of the controversy set forth in either the claim or counterclaim is less than \$100,000, then the matter shall be resolved by a single arbitrator selected pursuant to the rules of the NAF.

(d) If the amount of the controversy set forth in either the claim or counterclaim is equal to or exceeds \$100,000, then the matter shall be resolved by a panel of three arbitrators (the "Arbitration Panel") selected pursuant to the rules of the NAF. Decisions of a majority of the members of the Arbitration Panel shall be determinative.

(e) The arbitration hearing shall be held in such neutral location as the parties may mutually agree or, if they cannot agree, Wilmington, Delaware. The Arbitrator or Arbitration Panel is specifically authorized in proceeding pursuant to Section (d) to render partial or full summary judgment as provided for in the Federal Rules of Civil Procedure. Unless otherwise agreed by the parties, partial or full summary judgment shall not be available in proceedings pursuant to subsection (c) above. In the event summary judgment or partial summary judgment is granted, the non-prevailing party may not raise as a basis for a motion to vacate an award that the Arbitrator or Arbitration Panel failed or refused to consider evidence bearing on the dismissed claim(s) or issue(s). The Federal Rules of Evidence shall apply to the arbitration hearing. The party bringing a particular claim or asserting an affirmative defense will have the burden of proof with respect thereto. The arbitration proceedings and all testimony, filings, documents and information relating to or presented during the arbitration proceedings shall be deemed to be information subject to the confidentiality provisions of this Agreement. The Arbitration Panel will have no power or authority, under the Code of Procedure of the NAF or otherwise, to relieve the parties from their agreement hereunder to arbitrate or otherwise to amend or disregard any provision of this Agreement, including, without limitation, the provisions of this Paragraph.

(f) Should an arbitrator refuse or be unable to proceed with arbitration proceedings as called for by this Section, the arbitrator shall be replaced pursuant to the rules of the NAF. If an arbitrator is replaced after the arbitration hearing has commenced, then a rehearing shall take place in accordance with this Section and the Code of Procedure of the NAF.

(g) At the time of granting or denying a motion of summary judgment as provided for in (e) and within fifteen (15) days after the closing of the arbitration hearing, the arbitrator or Arbitration Panel will prepare and distribute to the parties a writing setting forth the arbitrator's or Arbitration Panel's finding of facts and conclusions of law relating to the Dispute, including the reasons for the giving or denial of any award. The findings and conclusions and the award, if any, shall be deemed to be information subject to the confidentiality provisions of this Agreement.

(h) The arbitrator or Arbitration Panel is instructed to schedule promptly all discovery and other procedural steps and otherwise to assume case management initiative and control to effect an efficient and expeditious resolution of the Dispute. The arbitrator or Arbitration Panel is authorized to issue monetary sanctions against either party if, upon a showing of good cause, such party is unreasonably delaying the proceeding.

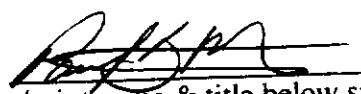
(i) Any award rendered by the arbitrator or Arbitration Panel will be final, conclusive and binding upon the parties and any judgment hereon may be entered and enforced in any court of competent jurisdiction.

(j) Each party will bear a pro rata share of all fees, costs and expenses of the arbitrators, and notwithstanding any law to the contrary, each party will bear all the fees, costs and expenses of its own attorneys, experts and witnesses; provided, however, that in connection with any judicial proceeding to compel arbitration pursuant to this Agreement or to confirm, vacate or enforce any award rendered by the arbitrator or Arbitration Panel, the prevailing party in such a proceeding shall be entitled to recover reasonable attorney's fees and expenses incurred in connection with such proceedings, in addition to any other relief to which it may be entitled.

22. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

THE VMI ALUMNI ASSOCIATION, INC.

By:   
(type/print name & title below signature line)  
Paul B. Maini, E.V.P.

FIRST USA BANK, N.A.

By:   
Joseph Purzycki, Senior Vice President

## EXHIBIT A

### ROYALTIES

During the term of this Agreement and any renewal terms thereof, FUSA agrees to pay to Group the following Royalties in conjunction with the Affinity Program which is the subject of this Agreement.

1. \$1.00 for each new Group Credit Card Account approved by FUSA pursuant to the Affinity Program ("Account Royalty").

2. In lieu of the Account Royalty described in item 1 above, \$25.00 ("Marketing Royalty") for every Group Direct Promotions Account opened for which the application was not generated by marketing programs paid for by FUSA and which have been generated through efforts or marketing programs sponsored and funded by Group.

3. \$1.00 for each existing active Account on such Account's annual anniversary date, unless each such Account has been canceled prior to such anniversary date (the "Renewal Royalty").

4. Five-tenths of one percent (0.50%) of the amount of Net Retail Sales posted to an Account and four-tenths of one percent (0.40%) of the amount of Net Retail Sales posted to a student Account (the "Sale Royalty"). For purposes of this Agreement, "Net Retail Sales" shall mean the aggregate amount of individual purchases posted to Accounts, but shall not include the aggregate amount of (i) all refunds to Cardmember Accounts, such as credits for returned merchandise or disputed billing items, (ii) those amounts representing annual fees, finance charges and other bank fees or charges posted to Cardmember Accounts (such fees to include, but not be limited to, late fees, return check fees, overlimit fees, credit insurance premiums, cash advance fees, collection costs and administrative fees), and (iii) the amount of all cash advance transactions and/or cash advance transaction fees (which include the use of convenience checks). The Sale Royalty shall also exclude any Net Retail Sales posted to Accounts whose cards have been reported lost or stolen and which have not been subsequently replaced or reissued by FUSA.

5. FUSA shall pay to Group a one-time payment in the sum of \$100,000 (the "Advance") which shall be offset against all amounts earned by Group hereunder. The Advance shall be paid to Group by FUSA upon (i) the delivery of at least 18,000 unique Group Member names as described in Paragraph 2(a) hereof (the "Qualifying List"), (ii) receipt of the Qualifying List by FUSA shall occur within thirty (30) days of execution of this Agreement, and (iii) finalization of the design of the front of the Credit Cards. In the event that Group delivers the Qualifying List to FUSA within the 30 day period but such List contains less than 18,000 unique Group Member names, FUSA shall deduct \$16.67 per name under the 18,000 minimum referenced above (the "Deduction") and the Guarantee described in item 6 below shall be reduced by an amount equal to the Deduction.

6. Unless decreased by the Deduction described above, FUSA shall guarantee Group minimum earnings from this Program of \$300,000 (the "Guarantee") provided that **Group: (a) fulfills all its obligations hereunder; (b) shall approve the marketing materials and programs proposed or submitted by FUSA; (c) continues to provide Group Member names to FUSA in accordance with this Agreement; and (d) neither Group's ownership of the Marks nor its ability to grant FUSA the right to use the Marks is eliminated or otherwise**

impaired or challenged in a court of law or like proceeding. The Guarantee shall be disbursed as follows:

\$100,000 Advance as described in 3 above  
\$33,500 within 30 days of the two year anniversary of this Agreement  
\$33,300 within 30 days of the three year anniversary of this Agreement  
\$33,300 within 30 days of the four year anniversary of this Agreement  
\$33,300 within 30 days of the five year anniversary of this Agreement  
\$33,300 within 30 days of the six year anniversary of this Agreement  
\$33,300 within 30 days of the seven year anniversary of this Agreement

The Guarantee shall be offset against all amounts earned by Group hereunder. At such time as actual earnings by Group exceed the Guarantee, FUSA shall pay Group as described in Paragraph 6 of this Agreement.

EXHIBIT B  
LICENSED MARKS

[please affix]

**THE VMI ALUMNI ASSOCIATION**

P.O. Box 932

Lexington, Virginia 24450

Fax: 540-464-4545

Telephone: 540-464-7221

## EXHIBIT C

### PROMOTIONAL VEHICLES TO BE PROVIDED BY GROUP

#### SIGNAGE

##### ONE FULL PAGE FULL COLOR AD IN PROGRAM

- Includes all regular season home games
- Includes all Playoff Home Games, if any

#### CONCOURSE BOOTHS

- **FOOTBALL HOME GAMES:** FUSA shall have the right to set up at least two (2) booths in the stadium/arena in which each event occurs and actively solicit applications at all home games, including post-season games, if any, and give away premiums featuring Group's logo supplied by FUSA (including but not limited to t-shirts) to all persons who apply for the card. Such displays shall be placed in prominent locations.
- **BASKETBALL HOME GAMES:** FUSA shall have the right to set up at least two (2) booths in the stadium/arena in which each event occurs and actively solicit applications at all home games, including post-season games, if any, and give away premiums featuring Group's logo supplied by FUSA (including, but not limited to, t-shirts) to all persons who apply for the card. Such displays shall be placed in prominent locations.
- **OTHER SPORTS (AT FUSA'S OPTION):** FUSA shall have the right to set up at least one (1) booths in the stadium/arena in which each event occurs and actively solicit applications at all home games, if any, and give away premiums featuring Group's logo supplied by FUSA (including, but not limited to, t-shirts) to all persons who apply for the card. Such displays shall be placed in prominent locations.
- A public address system will direct fans to go to the booths and sign up for the credit card at all FUSA attended games.

#### MISCELLANEOUS:

- Positioning of "take-one" applications at mutually agreeable locations.

06/10/2003 12:11 FAX

002

May 30, 2003

David Hoyt  
Senior Vice President  
Bank One, Delaware, N.A.  
201 N. Walnut Street  
Wilmington, DE 19801

Jeffrey M. Fincher  
Executive Vice President  
MBNA America Bank, N.A.  
1100 North King Street  
Wilmington, DE 19884-0211

Dear Messrs. Hoyt and Fincher:

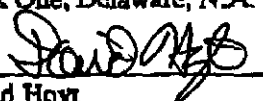
By returning this letter, VA MILITARY INST has agreed to enter into a relationship with MBNA America Bank, N.A. ("MBNA") to continue our affinity credit card program under the terms of the existing contract (and any such existing amendments) between VA MILITARY INST and Bank One, Delaware, N.A. (formerly known as First USA Bank, N.A.) (the "Agreement"). The Agreement with MBNA will go into effect on the date (the "Closing Date") that MBNA acquires from Bank One the credit card accounts and related receivables that were originated by Bank One and its predecessors pursuant to the Agreement with Bank One (collectively, the "Accounts"). At our request, Bank One has agreed to amend our contract to permit us to (1) terminate the Agreement with Bank One prior to the Closing Date and (2) direct Bank One to sell the Accounts to MBNA no later than June 30, 2003, or such other date as mutually agreed to by MBNA and Bank One. Consequently, we are providing you with our written agreement to: (1) terminate the Agreement with Bank One, (2) authorize and direct Bank One to sell the Accounts to MBNA, and (3) assign to MBNA on the Closing Date, all of Bank One's rights and obligations under the Agreement that existed prior to the date of this letter.

Please sign below to indicate each party's acceptance of these terms and return to me a fully executed copy of this letter.

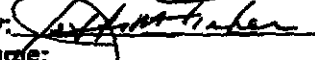
Sincerely,

  
Group OfficialExecutive Vice President  
TitleAccepted and Agreed:

Bank One, Delaware, N.A.

By:   
David Hoyt  
Senior Vice President  
Date: 6/24/03

MBNA America Bank, N.A.

By:   
Name: \_\_\_\_\_  
Title: EVP  
Date: 6/24/03